IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

Crl.MC.No. 935 of 2003()

---

AGAINST THE ORDER IN MC.33/2002 IN
CRMP.769/2002 of

. .....

PETITIONER:

---

C.S.JEEVAN, S/O. CHTHARANJAN
SATHYACHITHAM, THATTARKONAM, KARAMCODE P.O.

BY ADV. SRI.B.KRISHNA MANI
SRI.V.PREMCHAND

RESPONDENTS:

---

1. C.K.LEENAMOLE, D/O. KESAVAN,
KESAVA NIVAS, MOOLANKARA, ASRAMAM, KOLLAM.

2. DIVYAMOLE, DO. DO. REPRESENTED BY THE
1ST RESPONDENT.

BY ADV. SRI.K.SUBASH CHANDRA BOSE
SRI.R.RAJESH BABU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.1086/2003
IN CRL.M.C.935/2003.

---

DISMISSED.

12/3/2007. SD/- A.K. BASHEER, JUDGE.

**A.K. Basheer, J.**

**- - - - - - - - - - - - - - - - - - -**

**Crl.M.C. No. 935 of 2003**

**- - - - - - - - - - - - - - - - - - -**

**Dated this the 12th day of March, 2007.**

**O R D E R**

This petition filed under Section 482 of the Code of Criminal Procedure is at the instance of a husband who suffered an ex parte order in a proceeding under Section 125 of the Code of Criminal Procedure. In the said order, a copy of which is on record as Annexure 1, the Family Court, Kollam directed the petitioner to pay maintenance to his wife and daughter at the rate of Rs.500/= and 600/= respectively per month, from the date of petition viz., January 17, 2002. It appears that the petitioner had subsequently filed an application to set aside the above ex parte order with a petition to condone the delay of 23 days in filing the same. While those petitions were pending consideration, the wife and child had sought the assistance of the court in executing the order of maintenance. The learned Judge took note of the fact that the petitioner had not paid any amount towards the maintenance awarded. Accordingly the learned Judge had ordered to issue non bailable warrant against the petitioner. It was at that stage that the petitioner had preferred this petition before this Court way back in January 2003.

2. At the time when this petition came up for admission, this Court had passed an interim order of stay of execution with the result that the wife and child were prevented from getting the fruits of the decree passed by the Family Court.

3. When this petition came up for hearing on February 21, 2007 it was brought to my noticed that more than Rs.72,000/- was in arrears. Learned counsel for the petitioner while praying for an opportunity to contest the case on merit before the trial court requested that the ex parte order may be set aside and the case may be remanded

to the court below. It was also submitted that petitioner would be satisfied if the court below is atleast directed to consider the application to set aside the ex parte order. In view of the above plea this Court had directed the petitioner to deposit a sum of Rs.25,000/- to show his bonafides.

4. When this petition came up for further consideration today, learned counsel for the respondents submits that to his informtion no deposit has been made by the petitioner.

5. I have perused the materials placed on record. It is revealed from Annexure 1 order that the petitioner failed to appear before the court and defend the case though he had been served with notice. It is not in dispute that respondent No.1 is the legally wedded wife and respondent No.2 is the child borne in the said wedlock. More importantly, the case of respondent No.1 was that the petitioner had deserted her in the year 2000. Though several attempts were made to persuade him to take her back to the matrimonial home, the petitioner had refused to do so. Even a legal notice did not have any effect on the petitioner. Therefore I do not find any reason to interfere with the impugned order in this case.

There is no merit in the contentions raised by the petitioner. The Crl.M.C is accordingly dismissed.

**A.K. Basheer**

**Judge.**

**an.**